

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE
LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA,

No. C 09-05979 WHA

Plaintiff,

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT**

v.

ROBERTO PASTRAN, JR., an individual,
and RAMON PASTRAN a.k.a.
RAYMOND PASTRAN, an individual,

Defendants.

INTRODUCTION

In this ERISA action, plaintiff Board of Trustees of the Laborers Pension Trust Fund for Northern California moves for default judgment against defendant Ramon Pastran following his failure to appear in this action and respond to the complaint. Plaintiff alleges that defendant Ramon Pastran fraudulently cashed his deceased father's pension checks for a period of six years following his death. The Board of Trustees seeks to recover these wrongfully obtained pension benefits. For the following reasons, plaintiff's motion for default judgment is **GRANTED**.

STATEMENT

The Board of Trustees of the Laborers Pension Trust Fund for Northern California filed this action on December 22, 2009, alleging that defendant Roberto Pastran, Jr. wrongfully and fraudulently received pension benefits payable to his father, Roberto Pastran, Sr., for a period of

1 six years following his death (Dkt. No. 1). On March 2, following further investigation of the
2 matter, plaintiff filed an amended complaint adding Ramon Pastran — another son of Roberto
3 Pastran, Sr. — as a defendant.* Shortly thereafter, defendant Roberto Pastran, Jr. was voluntarily
4 dismissed from the action.

5 Pensioner Roberto Pastran, Sr. retired from employment and was awarded lifetime
6 pension benefits in July 1981. He passed away in March 2003. No notice was given to the Board
7 of Trustees of the Laborers Pension Trust Fund for Northern California that Robert Pastran, Sr.
8 was deceased. Despite his father's death, defendant Ramon Pastran continued to collect his
9 father's pension checks over a six year period. To accomplish this deceit, he forged his father's
10 signature on the "Annual Statement by Pensioner" certification form to falsely represent to
11 plaintiff that his father was still alive and eligible to receive his pension benefits. Defendant
12 Ramon Pastran also forged his father's signature on the checks themselves, cashed them, and used
13 the funds for his own purposes. According to plaintiff, Ramon Pastran collected no less than
14 \$68,183.50 in pension benefits through these fraudulent acts.

15 The amended complaint alleged four claims against defendant Ramon Pastran: (1) fraud,
16 (2) conversion, (3) unjust enrichment, and (4) equitable restitution under Section 502(a)(3) of
17 ERISA, 29 U.S.C. 1132(a)(3) (Compl. ¶¶ 4–28). Substitute service was effected on Ramon
18 Pastran on April 17, 2010 (Dkt. No. 24 ("First Norris Decl.") ¶¶ 3–4). He failed to answer. On
19 May 18, plaintiff filed a case management statement explaining that upon serving Ramon Pastran,
20 the process server learned from his live-in caregiver that defendant was in the hospital after
21 suffering a stroke (Dkt. No. 20). Given this news, rather than immediately move for entry of
22 default, plaintiff wrote a letter to defendant on May 14 requesting that he respond to the
23 complaint, contact an attorney, or contact plaintiff's counsel by May 21 (Dkt. No. 36 ("Second
24 Norris Decl.") ¶ 6, Exh. A). Plaintiff received no response to this letter. On June 1, plaintiff's
25 counsel contacted Ramon Pastran's live-in caregiver directly and learned that defendant had
26 received the summons and complaint and was recovering at his home. In this conversation,
27

28 * As noted in the complaint, Ramon Pastran also goes by the name Raymond
Pastran (Compl. ¶ 8).

1 defendant's caregiver mentioned to plaintiff's counsel that Ramon Pastran's physical condition
2 might not improve and that he was not able to respond to the complaint (First Norris Decl. ¶ 2).
3 Shortly thereafter, plaintiff moved for entry of default against Ramon Pastran. Default was
4 entered on June 10 (Dkt. No. 25).

5 A hearing on the instant motion was held on September 22. Defendant Ramon Pastran
6 was properly served with notice of the instant motion as well as the September 22 hearing date.
7 He did not appear at the hearing, either personally or through counsel.

8 ANALYSIS

9 FRCP 55(b)(2) permits a court, following an entry of default, to enter default judgment
10 against a defendant. "The district court's decision whether to enter default judgment is a
11 discretionary one." *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). To assist courts in
12 determining whether default judgment is appropriate, the United States Court of Appeals for the
13 Ninth Circuit has enumerated the following seven factors for courts to consider: (1) the
14 possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim(s), (3) the
15 sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of
16 dispute concerning material facts, (6) whether default was due to excusable neglect, and (7) the
17 strong policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
18 1986). Upon entry of default, all factual allegations within the complaint are accepted as true
19 except allegations relating to the amount of damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826
20 F.2d 915, 917–18 (9th Cir. 1987). Additionally, the scope of relief granted by default judgment is
21 limited by FRCP 54(c), which states that "[a] default judgment must not differ in kind from, or
22 exceed in amount, what is demanded in the pleadings."

23 1. SERVICE OF PROCESS

24 Under FRCP 4(e)(2)(B), serving a suitable copy of the summons and complaint at an
25 individual defendant's dwelling with someone of suitable age and discretion who resides there
26 constitutes proper service. On April 17, one copy of both the summons and complaint was left at
27 defendant's home with his live-in caregiver. Additionally, a separate copy of the summons and
28 complaint was mailed to defendant (First Norris Decl. ¶ 3). According to defendant's live-in

1 caregiver, defendant Ramon Pastran received these documents. Given these facts, this order finds
2 that service of process upon defendant Ramon Pastran was adequate.

3 **2. MERITS OF THE CLAIMS AND THE SUFFICIENCY OF THE COMPLAINT**

4 As a threshold matter, this order finds that defendant Ramon Pastran is not an infant,
5 incompetent person, a soldier in military service, or otherwise exempted from default judgment
6 under the Servicemembers Civil Relief Act (Second Norris Decl. ¶ 8).

7 **A. Claim One: Fraud**

8 To prevail on a claim for fraud, a plaintiff must prove (1) a knowingly false representation
9 by the defendant, (2) an intent to deceive or induce reliance, (3) justifiable reliance by the
10 plaintiff, and (4) resulting damages. *Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 173 (2003).
11 FRCP 9(b) requires that “[i]n all averments of fraud or mistake, the circumstances constituting
12 fraud or mistake shall be stated with particularity.” The rule demands that averments of fraud be
13 accompanied by “the who, what, when, where, and how” of the misconduct charged. *See Vess v.*
14 *Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Additionally, a “plaintiff must set
15 forth what is false or misleading about a statement, and why it is false.” *Ibid.*

16 These requirements have each been met. The first amended complaint stated with
17 particularity that defendant Ramon Pastran forged his father’s signature on the “Annual Statement
18 by Pensioner” certification form to falsely and intentionally represent to plaintiff that Roberto
19 Pastran, Sr. was still alive and eligible to receive pension benefits. The complaint also alleged
20 that for a six year period following his father’s death, Ramon Pastran forged his father’s signature
21 on pension checks and cashed them for his own benefit, wrongfully collecting no less than
22 \$68,183.50 in unearned pension payments. Copies of Roberto Pastran, Sr.’s death records and the
23 falsified certification forms and checks are attached to the declaration filed by plaintiff in support
24 of the instant motion (*See Declaration of Edwin Embry*). Treating the allegations in the
25 complaint as true, there is no question that plaintiff’s fraud claim is meritorious and that the claim
26 has been properly pleaded.

B. Claim Two: Conversion

The elements of the tort of conversion are: (1) the plaintiff's ownership or right to possession of personal property, (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights, and (3) resulting damages. *Fremont Indem. Co. v. Fremont General Corp.*, 148 Cal. App. 4th 97, 119 (2007).

Accepting the factual allegations in the complaint as true, there is no question that plaintiff owned and had the right to possession of the pension benefits wrongfully acquired by defendant Ramon Pastran. There is also no question that defendant misrepresented to plaintiff that his father was still alive and cashed his deceased father's pension checks in a manner inconsistent with plaintiff's property rights. Plaintiff clearly suffered damages as a result of defendant's actions. Accordingly, plaintiff's conversion claim is undoubtedly meritorious and properly pleaded.

C. Claim Three: Unjust Enrichment

It is unsettled whether unjust enrichment is a valid claim for relief under California law. According to one line of decisions, unjust enrichment is not a claim for relief but "a general principle" that is "synonymous with restitution" underlying "various legal doctrines and remedies." *McBride v. Boughton*, 123 Cal. App. 4th 379, 389 (2004) (citations omitted). Under a different line of decisions, a claim for unjust enrichment may be validly stated by alleging the receipt of a benefit and the unjust retention of the benefit at the expense of another. *Lectrodryer v. SeoulBank*, 77 Cal. App. 4th 723, 726 (2000).

Given the merits of plaintiff's other three claims, resolving this question is unnecessary. As explained herein, plaintiff has more than sufficiently demonstrated its entitlement to the full relief requested under its claims for fraud, conversion, and equitable restitution under ERISA.

D. Claim Four: Equitable Restitution Under ERISA

Plaintiff's final claim is for equitable restitution under Section 502(a)(3) of ERISA, 29 U.S.C. 1132(a)(3). This section states:

A civil action may be brought . . . by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan [.]

1 As alleged in the complaint and set forth in the declaration of Edwin Embry, plaintiff is a
2 fiduciary under ERISA and is therefore eligible to bring a civil action to obtain equitable relief to
3 redress violations of the Act or to enforce the provisions of the plan (Embry Decl. ¶ 1). See 29
4 U.S.C. 1132(a)(3). Additionally, plaintiff has more that adequately pleaded and proven that
5 defendant violated the terms of his father's ERISA pension plan by fraudulently representing to
6 plaintiff that his father was still alive and converting his father's pension checks for his own use.
7 This claim is both meritorious and sufficiently pled.

8 3. THE REMAINING EITEL FACTORS

9 The remaining *Eitel* factors favor the entry of default judgment against defendant. *First*, if
10 the motion is not granted, plaintiff will be left without a remedy to recover \$68,183.50 in pension
11 benefits wrongfully paid to and received by defendant Ramon Pastran. *Second*, while defendant
12 never responded to the complaint, it is unlikely that the material facts herein will be disputed.
13 The death records submitted by plaintiff establish that Roberto Pastran, Sr. passed away in March
14 2003. Nevertheless, *someone* maintained the guise that he was alive for another six years. While
15 plaintiff could have appeared in this action to dispute his involvement in the scheme alleged, he
16 did not. *Third*, there is no evidence that defendant's failure to respond to the complaint or appear
17 in this action was the result of excusable neglect. If it turns out that defendant's medical
18 condition was a valid reason for this failure, such evidence can be presented in a properly filed
19 motion to set aside the default judgment. *Fourth*, given the circumstances of this action, the sum
20 of money requested by plaintiff weighs in favor of default judgment. Plaintiff only seeks to
21 recover the \$68,183.50 in pension benefits wrongfully paid to and received by defendant Ramon
22 Pastran, plus reasonable attorney's fees and costs associated with obtaining this relief. This
23 request is both reasonable and justifiable. Finally, although federal policy always favors a
24 decision on the merits, Rule 55(b) plainly allows entry of default judgment where the defendant
25 does not participate in the litigation.

26 In sum, after careful consideration of all of the *Eitel* factors, this order finds that the entry
27 of default judgment against Ramon Pastran is warranted.
28

1 **4. SCOPE OF RELIEF**

2 Plaintiff seeks \$68,183.50 in wrongfully received pension benefits, \$21,997.50 in
3 attorney's fees, and \$1,869.23 in litigation costs. Given the extensive documentation submitted
4 by plaintiff with respect to the pension benefits actually paid to defendant following his father's
5 death, this order will award the requested \$68,183.50 in overpaid pension benefits to plaintiff.

6 With respect to plaintiff's requested award of attorney's fees and costs, Section 502(g)(1)
7 of ERISA states:

8 In any action under this subchapter (other than an action described
9 in paragraph (2)) by a participant, beneficiary, or fiduciary, the
10 court in its discretion may allow a reasonable attorney's fee and
11 costs of action to either party.

12 29 U.S.C. 1132(g)(1). Claim four in this action — brought pursuant to Section 502(a)(3) of
13 ERISA — qualifies under Section 502(g)(1) of the Act.

14 The discretion given to courts to award fees under this section is exercised liberally in
15 favor of granting attorney's fees to successful plaintiffs "unless special circumstances would
16 render such an award unjust." *Elliot v. Fortis Benefits Ins. Co.*, 337 F.3d 1138, 1148 (9th Cir.
17 2003). Although no single factor is dispositive, a court should generally consider five factors in
18 determining whether or not to award attorney's fees for an ERISA claim: (1) the degree of the
19 opposing party's culpability or bad faith, (2) the ability of the opposing party to satisfy an award
20 of fees, (3) whether an award of fees would deter others from acting under similar circumstances,
21 (4) whether the party requesting fees seeks to benefit all participants and beneficiaries of an
22 ERISA plan or to resolve a significant legal question regarding ERISA, and (5) the relative merits
23 of the parties' positions. *Hummell v. S. E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980).

24 Accepting the factual allegations in the complaint as true, defendant Ramon Pastran
25 fraudulently misrepresented to plaintiff that his deceased father, Roberto Pastran, Sr., was still
26 alive in order to continue receiving his pension checks. He then forged his father's signature on
27 each of these checks, cashed them, and used the funds for his own purposes. This went on for six
28 years. Given this backdrop, an award of reasonable attorney's fees and costs is warranted given
the high degree of bad faith and culpability surrounding Ramon Pastran's actions. Such an award
will also deter others from similar fraudulent acts in the future. Most important, an award of

1 reasonable attorney's fees and costs would benefit all participants of the pension plan by restoring
2 funds expended by plaintiff to litigate this action. Finally, as discussed herein, plaintiff's position
3 is clearly meritorious.

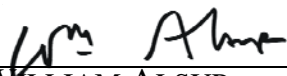
4 Because these factors weigh heavily in favor of granting a reasonable award of attorney's
5 fees and costs, this order — after vetting the detailed fee breakdown submitted by plaintiff's
6 counsel in support of the instant motion — approves plaintiff's request for \$21,997.50 in
7 reasonable attorney's fees. Plaintiff will also be entitled to taxable costs. The amount of taxable
8 costs, however, will be determined in strict compliance with the local rules.

9 CONCLUSION

10 For the reasons set forth above, plaintiff's motion for default judgment is **GRANTED**.
11 Judgment in favor of plaintiff and against defendant Ramon Pastran in the amount of \$68,183.50
12 in overpaid pension benefits and \$21,997.50 in attorney's fees will be entered accordingly.
13 Following the entry of judgment, plaintiff may serve and file a bill of costs pursuant to the civil
14 local rules.

15
16 **IT IS SO ORDERED.**

17
18 Dated: September 27, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE